

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NOS. 2021-143-E & 2021-144-E**

In Re:)
)
Application of Duke Energy Progress,)
LLC for Approval of Smart Saver Solar)
as Energy Efficiency Program)
)
Application of Duke Energy Carolinas,)
LLC for Approval of Smart Saver Solar)
as Energy Efficiency Program)

**SEIA’S PETITION FOR
CLARIFICATION AND STATEMENT
IN SUPPORT OF DUKE’S PETITION
FOR RECONSIDERATION AND/OR
REHEARING OF ORDER NO. 2022-
239**

Pursuant to S.C. Code Section 58-27-2150 and S.C. Code Ann. Regs. 103-825, 103-854, and applicable South Carolina law, the Solar Energy Industries Association (“SEIA”) hereby respectfully petitions the Public Service Commission of South Carolina ("Commission") for clarification regarding certain findings and conclusions in Order No. 2022-239 (“Order”). SEIA also respectfully hereby notifies the Commission of SEIA’s support for Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, the “Companies”) petition for reconsideration and/or rehearing of Order No. 2022-239.

SEIA specifically requests that the Commission clarify its interpretation and finding on the applicability of Section 58-37-20 to the Smart Saver Solar program and, additionally, requests that the Commission give due consideration to the broader policy implications of denying the Smart Saver Solar application. Denial of the Smart Saver Solar will undermine the continued ability of the rooftop solar market to sustain in the Companies’ territories, will have a chilling effect on future Section 58-37-20 program development, and subvert the legislatively enacted “state's policy of encouraging renewable energy”. (S.C. CODE ANN. §58-41-20(F)(2))

SEIA reiterates that changes to net metering in the Solar Choice dockets will significantly reduce the rooftop solar market in South Carolina. SEIA's support of the agreement between various stakeholders and the Companies is conditioned on full approval of the entire agreement (i.e., the Solar Choice rate changes and the Smart Saver Solar proposal), which SEIA believes would, in tandem, give the solar market in South Carolina at least a fighting chance to sustain. SEIA requests that the Commission grant the relief put forward by the Companies' Petition and to provide additional clarification on whether the Smart Saver Solar applications pass the legal threshold question making Section 58-37-20 applicable to these applications.

I. SEIA Requests that the Commission Clarify that the Order's Application of Section 58-37-20 Is Based on a Finding that Solar Photovoltaic Generating Technologies Are an Eligible Technology Under Section 58-37-20.

After six days of hearing and voluminous written submissions on whether solar photovoltaics ("PV") can qualify as an energy efficiency measure under Section 58-37-20, the Commission's analysis in the Order lacks a specific finding of fact and conclusion of law addressing an integral element of the "seminal question in these dockets." (Order at 9.) The Order appears to bypass the threshold legal eligibility question—which was the subject of a motion for summary judgment filed by the Office of Regulatory Staff—and proceeds directly to the subsequent factual question of cost-effectiveness. The Order includes approximately nine pages summarizing parties' positions on whether solar PV can be considered energy efficiency, but the analysis portion of the Order does not make a finding or conclusion of law on this issue.

Rather, the Commission's basis for denying the Smart Saver Solar applications is rooted in applying the traditional cost-effectiveness evaluation of programs brought pursuant to Section 58-37-20. As stated on p. 35 of the Order:

“Turning to the facts and the evidence of record in this matter, and applying South Carolina statutory law, we disapprove the SSS program as a cost-effective energy efficiency program pursuant to 58-37-20. Duke did not provide the Commission with sufficient evidence to support its assertions the Smart Saver Solar program will be cost-effective.”

Parties are forced to rely on inference that the Commission finds this section applicable to solar PV generating technologies under the presented circumstances. If the Commission had found Section 58-37-20 inapplicable to the applications, the discussion of cost-effectiveness that follows this quoted statement would be rendered moot or offered only as dicta. As the Commission explained in declining to address the applicability of Section 58-40-20(I) to prohibit the recovery of lost revenues, the finding that Smart Saver Solar was not cost-effective and eligible for cost recovery under Section 58-37-20 rendered a legal opinion moot on the applicability of Section 58-40-20(I). (Order at 38.)

The lack of a specific finding on this issue will have a chilling effect on the ability of utilities and industry to collaboratively invest time and resources into Section 58-37-20 energy efficiency programs and in doing so would subvert the intent of the legislature to encourage investment and adoption of energy efficient technologies and energy conservation programs.¹

While SEIA firmly maintains the Commission should reconsider its decision and approve the Smart Saver Solar program, a specific finding as to the applicability of Section 58-37-20 to the proposed program can be consistent with the Commission’s existing order. The Commission identified “[t]he seminal question in these dockets is whether the Smart Saver Solar program

¹ South Carolina Code Section 58-37-20 authorized the Commission to adopt procedures that “encourage electrical utilities...to invest in cost-effective energy efficient technologies and energy conservation programs.” Further, the General Assembly stated in Act 62 of 2019 “[i]t is the intent of the General Assembly to expand the opportunity to support solar energy and support access to solar energy options for all South Carolinians.” (S.C. Code Ann. §58-41-40.) Act 62 also recognized the legislatively enacted “state's policy of encouraging renewable energy.” (S.C. Code Ann. §58-41-20(F)(2).)

qualifies as a cost-effective energy efficiency measure pursuant to section 58-37-20.” (Order at 9.) The factual question of whether a program is cost-effective can only be answered after addressing the threshold legal question of whether the program qualifies as an energy efficiency measure. In effect, two analyses must be conducted to answer the seminal question identified by the Commission – first, is the program an energy efficiency measure under the terms of the statute, and second does it meet the Commission’s requirements for cost-effectiveness. Accordingly, the factual question of whether a proposed Section 58-37-20 program is cost-effective can be separated from the legal threshold question of whether the proposed program can be considered an energy efficiency measure under the statute. It is this initial legal threshold question of whether solar photovoltaic panels can be considered energy efficiency under section 58-37-20 that SEIA respectfully petitions the commission to answer in the affirmative due to the economic and policy ramifications associated with failing to clarify that issue.

Notwithstanding the dispute surrounding the factual question of cost-effectiveness, there can be no doubt the legislature intended for renewable energy technologies such as solar PV to qualify as an energy efficiency measure under section 58-37-20 subject to the discretionary authority of the Commission to approve or disapprove. And, irrespective of what definitions the industry may apply to EE or DSM, it is the terms of the statute that control the analysis in this docket. The General Assembly clearly identified Section 58-37-20 programs as those conducted by an electrical utility “for the reduction or more efficient use of energy requirements of the utility or its customers including, but not limited to, utility transmission and distribution system efficiency, customer conservation and efficiency, load management, cogeneration, and renewable energy technologies.” The plain language of the statute evidences the legislature’s intent to characterize solar PV as energy efficiency through specifically identifying Section 58-

37-20 programs as those which include “renewable energy technologies.” The statute further identifies such a program as one “for the reduction...of energy requirements of the utility.” Solar PV is both a renewable energy technology and, as used in the proposed program, would reduce the energy requirements of the utility.

For the reasons stated herein, SEIA respectfully requests the Commission provide clarification regarding its findings of fact and conclusions of law on whether the Companies proposed program intended to encourage reductions in energy consumption from the grid by incentivizing the installation of solar PV facilities at residential premises qualifies as an energy efficiency program in accordance with Section 58-37-20. There is good cause to clarify whether the Commission finds as a matter of statutory interpretation that solar PV qualifies as energy efficiency under Section 58-37-20, separate and apart from the subsequent factual determination of cost-effectiveness. Without further clarification, parties on either side of the issue can claim vindication of their legal positions in proposing or opposing Smart Saver Solar as a legal matter. Therefore, any future proposals with a similar set of facts will likely cause parties and the Commission to inefficiently relitigate the threshold legal issue, spending the parties’ and the Commission’s limited resources on a matter that is capable of clarification in the current docket.

II. Absent Approval of Smart Saver Solar, the Commission’s Earlier Approval of the Companies’ Solar Choice Program Threatens to Significantly Disrupt the Solar Market in South Carolina.

The Smart Saver Solar proposal, in tandem with the Solar Choice program, is the cornerstone of an agreement between the Companies and other stakeholders regarding the future of rooftop solar policy in South Carolina. SEIA’s support of the Solar Choice rate design and the

modifications to net metering has always been contingent² on the availability of the Smart Saver Solar incentive, which provides a template for future policy innovation to leverage customer-sited distributed energy resources to provide net benefits to all ratepayers. Absent the availability of these incentives and program, SEIA has consistently taken the position that the rate design is insufficient to support sustained growth of the rooftop solar industry at the levels anticipated and desired by the General Assembly when it passed the Energy Freedom Act.³ Likewise, the absence of this program impacts customers wishing to invest in distributed energy technology as well as stripping non-adopters of the net benefits produced by these systems. SEIA respectfully requests the Commission give due consideration to these overarching policy issues, as the fate of the rooftop solar industry and the success of the Solar Choice programs are inextricably tied to the approval of the Companies' Smart Saver Solar proposal.

III. Should the Commission Deny the Companies' Petition for Reconsideration and/or Rehearing of the Smart Saver Solar Proposal, the Solar Choice Docket Should Be Reopened to Investigate Whether Additional Measures Are Needed to Mitigate the Transition to Solar Choice Without the Availability of Smart Saver Solar Incentives.

Approval of the Companies Solar Choice programs, effective June 1, 2021, established a pathway to transition from Act 236 retail net metering to a time-of-use monthly net metering. At that time, SEIA acknowledged that these changes would reduce the value proposition for customer-generators in rates. Knowing that the Smart Saver Solar proposals would not be filed and decided until after resolution of the Solar Choice proceedings, SEIA supported the establishment of an interim tariff to maintain the basic structure of Act 236 retail net metering

² See, e.g., *Conditional Letter of Support* of SEIA and North Carolina Sustainable Energy Association, filed on December 4, 2020 in Docket Nos. 2020-264-E and 2020-265-E; *Direct Testimony of Justin R. Barnes*, p. 3 line 16 through p. 4 line 18, Docket Nos. 2020-264-E and 2020-265-E (Feb. 8, 2021)

³ *Id.*

with slight adjustments to move the netting period from an annual reconciliation to a monthly one.⁴ It was SEIA's hope and expectation in June 2021, when the Smart Saver Solar applications were filed, that the dockets would be addressed as typical energy efficiency program applications and resolve well before the effective date of the new Solar Choice tariffs of January 1, 2022.

Given the adopted procedural schedule, lengthy evidentiary hearing, and contentious nature of this proceeding, SEIA recognizes the pressures on the Commission to accommodate the needs of the various parties to accomplish a thorough vetting of these proposals. However, the expiration of the interim Solar Choice policy on December 31, 2021 prior to the resolution of the instance case means that any new customer-generators in the Companies' territory are forced to take service under the new, more complex rate design without the availability of upfront incentives to help justify the choice to go solar. As a result, prospective customer-generators are exposed to the negative changes to the value proposition without the positive attributes of Smart Saver Solar. It was the balance of these two individual proposals that formed the basis of the bargain between SEIA, the Companies, and other settling parties. If the Commission does not grant reconsideration and approve the Smart Saver Solar applications, the near-term impact on the solar market could be profound. In fact, this is likely already happening in the Companies' service territory, putting immense pressure on solar installers, the majority of which are locally owned and operated, who no longer have a viable solar program into which to sell.

Accordingly, SEIA notes that failure to approve Smart Saver Solar applications on reconsideration could necessitate expedited consideration of other alternatives, including but not

⁴ SEIA acknowledges that the Companies' stated reason for establishing the interim tariff was to accommodate changes to the billing system to accomplish Solar Choice rate designs, but notes that the transition period was also important to SEIA as a bridge to give the Commission ample opportunity to rule on the Smart Saver Solar applications prior to the effective date of the new Solar Choice tariffs.

limited to reinstating the interim Solar Choice option while all stakeholders work together to find a different path forward. SEIA's hope is that all parties, including the Office of Regulatory Staff—either through legislation or in a future program application—will come together to preserve the option for customers to utilize solar to reduce their costs and to avoid the loss of hundreds of good-paying solar jobs that depend on a viable rooftop solar market in the Companies' territories.

CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated herein, SEIA respectfully requests the Commission provide clarification regarding its findings of fact and conclusions of law on whether the Companies proposed program intended to encourage reductions in energy consumption from the grid by incentivizing the installation of solar PV facilities at residential premises qualifies as an energy efficiency program in accordance with Section 58-37-20. In addition, SEIA further reiterates its support for the Companies petition for reconsideration and/or rehearing of Order No. 2022-239.

Respectfully Submitted,

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April 14, 2022

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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one copy of **Seia's Petition for Clarification and Statement in Support Of Duke's Petition for Reconsideration and/or Rehearing of Order No. 2022-239**, to the persons named below at the addresses set forth via electronic mail and/or e-filing:

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April 14, 2022